IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.15109 OF 2004
AND
WRIT PETITION NO.15110 OF 2004

In W.P.15109/2004 :

Between:

L.Siva Reddy, s/o Rama Subba Reddy,
Balasingayapally Village, Chennur Mandal, Kadapa District.

..... PETITIONER

AND

1 The Chairman, District Level Committee (Sand Auctions), Kadapa, Kadapa District. Mines and Minerals
2 The District Collector, Kadapa, Kadapa District.
3 The District Panchayat Officer, Kadapa, Kadapa District.
4 Dr.D.L.Ravindra Reddy, M.L.A., Khajipet, Kadapa District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus or any other appropriate writ, order, holding that the proceedings in Roc.No.1872/2000-A2, dated 19-8-2004 of the District Collector, the 2nd respondent as illegal, arbitrary, unreasonable without jurisdiction and opposed to the principles of natural justice.

Counsel for the Petitioner : MR.N.PARAMESWARA REDDY

Counsel for the Respondents 1 to 3 : GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for Respondent No.4 : Sri Polisetti Radha Krishna.

In W.P.No.15110 of 2004 :

Between:

L. Siva Reddy S/o Rama Subba Reddy
Balasingaya Pally Village, Chennur Mandal, Kadapa District

..... PETITIONER

AND

1 The Chairman, District Level Committee, (Sand Auction), Kadapa Mines and Minarals
2 The District Collector, Kadapa
3 The District Panchayat Officer, Kadapa
4 Dr. D.L. Ravindra Reddy MLA., Khajipet, Kadapa District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ, order, holding that the Telegraphic order dated 20-8-2004 issued by the District Collector, 2nd respondent as illegal arbitrary and opposed to the principals of natural justice.

Counsel for the Petitioner : MR.N.PARAMESWARA REDDY

Counsel for the Respondents 1 to 3 : GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for the Respondent No.4 : Sri Polisetti Radha Krishna.

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.15109 OF 2004
AND
WRIT PETITION NO.15110 OF 2004

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COMMON ORDER :

One L.Sivareddy is the petitioner in these two writ petitions. In pursuance of the notification dated 01-04-2000 notifying the auction of the leasehold rights to quarry the sand, the petitioner was declared as the highest bidder in respect of the sand quarry of Chemullapalli village, Khajipet Mandal, Kadapa district. The lease was for a period of one year. Subsequently, by virtue of the orders of the District Collector, dt. 19-11-2002 he was permitted to transport the sand through an alternative route through Sy.Nos.45/1 and 45/A1 of Chennamukkapalle. Thereafter, he was given the lease for the second year with 10% excess over the lease amount of the first year vide proceedings of the District Level Committee dated 22-07-2003 subject to the condition that he should transport the sand through the alternative route through Sy.Nos.45/1 and 45/A1 of Chennamukkapalle to the main road. The lease agreement dated 22-07-2003 was accordingly entered into. The second term of the lease was for the period from 22-07-2003 to 21-07-2004. While so, due to the prevailing groundwater conditions there was a ban for sometime on sand quarrying and consequently the petitioner could not quarry the sand for a period of 130 days. On 5-7-2004 the petitioner made a representation requesting the respondents to permit him to quarry the sand by extending the lease period. The 1st respondent – District Level Committee (Sand Auctions), Kadapa by proceedings dated 22-07-2004 extended the lease period by 130 days commencing from 22-07-2004 to 28-11-2004.

While so, the District Collector, Kadapa vide proceedings dated 19-08-2004 directed the petitioner not to transport the sand through the route in Sy.No.45/1 and 45/A1 of Chennamukkapalle stating that the permission accorded earlier under the proceedings dated 19-11-2002 to transport the sand through the said alternative route has been cancelled. On the next day, on 20-08-2004 the petitioner was also

served with a telegram issued by the District Collector stating that as per the directions of the Chief Minister of Andhra Pradesh the orders dated 22-07-2004 are cancelled and that he should stop sand mining at once and return the way bills, failing which disciplinary action will be initiated.

The petitioner filed W.P.15109 of 2004 challenging the proceedings dated 19-08-2004 under which the alternative route was cancelled and W.P.No.15110 of 2004 has been filed challenging the telegraphic order dated 20-08-2004 cancelling the earlier proceedings dated 22-07-2004 under which the petitioner was granted extension of the lease for a further period of 130 days from 22-07-2004.

The contention of the petitioner is that the proceedings of the District Collector, dated 19-08-2004 which was issued solely on the basis of a representation of one Dr. D.L.Ravindra Reddy, M.L.A., Mydukur Constituency, without affording any opportunity to the petitioner to rebut the allegations, if any, is arbitrary and illegal. Similarly, the telegram dated 20-08-2004 directing the petitioner to stop the quarrying at once without assigning any reasons and without any prior notice is in violation of the principles of natural justice apart from being contrary to the statutory provisions.

On behalf of the respondents, a counter-affidavit has been filed in W.P.No.15110 of 2004. The District Panchayat Officer, Kadapa has sworn to the counter-affidavit stating that there were spate of complaints against the petitioner alleging violation of conditions of lease. The villagers of Chemullapalli Gram Panchayat submitted a representation dated 10-02-2003 to the District Collector, Kadapa stating that the groundwater has been considerably decreased and it also resulted in erosion of soil and there is serious threat to the villages and sought immediate action for stoppage of sand quarrying by the petitioner. The 2nd respondent directed the Chief Executive Officer, Zilla Parishad and the Deputy Director, Groundwater Department, to conduct enquiry and to submit a report for taking appropriate action. The inspection was

conducted by the said authorities, during which it was found that the petitioner was transporting the sand without following the guidelines and instructions issued by the district administration. In their report, dated 14-02-2003, they have specified the violations found by them. As per the said report, sand quarrying by the petitioner would result in danger not only to the human beings but also to the cattle. In the circumstances, it was recommended by the authorities to stop quarrying activities in Chemullapalli Gram panchayt in Penna River-bed. Consequently, the District Collector, Kadapa vide proceedings dated 28-02-2003 directed the petitioner to stop the operation of sand quarrying. The petitioner once again submitted a representation dated 31-03-2003 seeking permission to transport the sand from Chemullapalli quarry and to withdraw the orders issued by the District Collector, dated 28-02-2003. In pursuance thereof, the District Level Committee in its meeting held on 25-04-2003 reviewed the matter and agreed to grant permission to the petitioner. Accordingly, the District Collector, Kadapa passed orders dated 2-5-2003 allowing the petitioner to quarry the sand. Thereafter, by proceedings dated 22-07-2003 the lease was extended for a further period of one year in terms of G.O.Ms.No.1, dated 1-1-2001. Subsequently, to compensate the period of ban, the District Level Committee vide proceedings dated 22-07-2004 extended the lease for a further period from 22-07-2004 to 28-11-2004. However, the complaints against the petitioner continued to exist and during the visit of Chief Minister to Kadapa on 16-08-2004 and 17-08-2004, some representations were given to him, on the basis of which the Chief Minister keeping in view the public interest and adverse affect on groundwater level directed the District Collector to take steps to cancel all the existing leases and call for fresh tenders, where there will be no adverse affect on groundwater level and other local problems. In pursuance thereof, the District Collector, Kadapa vide proceedings dated 19-05-2004 directed the District Panchayat Officer, Kadapa to take necessary action for cancellation of existing leases. In the circumstances, the third respondent District Panchayat Officer issued a

telegram in the name of the District Collector, Kadapa informing the petitioner that the lease granted in his favour dated 22-07-2004 is cancelled. Thus, it has been pleaded that the cancellation was made only in the public interest basing on the complaints received by the District Administration and also on the basis of the representations given to the Chief Minister. The other allegation made by the petitioner that the impugned proceedings were issued at the instance of the Member of Legislative Assembly of Mydukur has been denied and it is further stated that since the petitioner has indulged in illicit quarrying in Chennamukkapalli quarry, the District Panchayat Officer as a preventive measure issued a telegraphic order 20-08-2004 and the petitioner does not have any vested right to continue the quarrying of the sand and therefore the writ petition is liable to be dismissed.

I have heard the learned Counsel for the petitioner and the learned Advocate General appearing for the respondents 1 to 3 and perused the material on record.

Admittedly by proceedings dated 22-07-2004 issued by the District Level Committee, Kadapa the petitioner has been permitted for lifting the sand from the quarry in question for a further period of 130 days upto 28-11-2004 so as to compensate the period during which he could not carry on the quarrying operations. Though in the counter-affidavit filed by the District Panchayat Officer, there was a reference to the complaints alleged to have been received against the petitioner, all the said complaints were admittedly much prior to 22-07-2004. After the lease has been extended under the proceedings of the 1st respondent dated 22-07-2004, it appears that during the visit of the Chief Minister to Kadapa on 16th and 17th August, 2004 certain complaints have been received and on the basis of the instructions of the Chief Minister, the District Collector by Note dated 19-08-2004, directed the District Panchayat Officer, Kadapa to take immediate necessary action as per the directions of the Chief Minister to cancel all the existing leases, in

pursuance of which the District Panchayat Officer issued the impugned telegraphic orders dated 20-08-2004.

At the outset, it is to be noted that the grant of lease of sand bearing areas in the State is governed by a detailed procedure prescribed under Rule9-B of A.P. Minor Mineral Concession Rules, 1966 as substituted under G.O.Ms.No.1, Industries and Commerce Department, dated 01-01-2001. It is clear from the said Rules that the District Level Committee is the competent authority not only to grant or terminate the lease but also to decide on any matter or problem arising during the course of the implementation of the Rules. It is not in dispute that even the extension of lease has been granted by the District Level Committee in favour of the petitioner under proceedings dated 22-07-2004. There is nothing on record to show that the matter was placed before the District Level Committee and it is not the case of the respondents that the Note of the District Collector, dated 19-08-2004 was based on the decision of the District Level Committee. As a matter of fact, in the counter-affidavit, the third respondent – District Panchayat Officer states that telegram dated 22-08-2004 which is impugned in W.P.No.15110 of 2004 was issued on the instructions of the District Collector in the interest of the public and that he was never directed by the Chief Minister to issue such a telegram. On a perusal of the material on record, it is clear that the impugned decision to cancel the extended lease was taken by the District Collector himself and it was not routed through the District Level Committee.

As expressed above, under the Rules as amended by G.O.Ms.No.1, dated 1-1-2001 the District Level Committee alone is the competent authority either to grant or cancel the sand quarrying lease and neither the District Collector nor the District Panchayat Officer is empowered to pass any order cancelling the proceedings dated 22-07-2004. Moreover, the telegraphic order passed by the District Panchayat Officer is also contrary to the procedure prescribed under the statutory rules since there was no previous notice to the lessee/petitioner as

required under terms and conditions of Form G-1 Lease Agreement executed under Rule 9-H(2) of the Rules. Several allegations referred to in the counter which relate to prior to 22-07-2004 are irrelevant for the purpose of these writ petitions. Even assuming that after granting extension on 22-07-2004 certain irregularities were committed by the petitioner and it is necessary to cancel the extension of lease in public interest, the respondents ought to have resorted to the same by following the procedure prescribed under law after affording an opportunity to the petitioner to rebut the allegations, if any, received against him.

Sine no such procedure has been followed and particularly since the respondents 1 and 3 are not competent to cancel the extension of lease granted in favour of the petitioner, the impugned telegraphic order dated 20-08-2004 cannot be sustained and the same is accordingly set aside. The order dated 19-08-2004 which is impugned in W.P.No.15109 of 2004 is also bad in law since the same was not preceded with any notice calling upon the petitioner to explain the allegations made thereunder. The said order is solely based on the letter dated 16-08-2004 addressed by the 4th respondent who is a Member of the Legislative Assembly alleging illicit sand quarrying. If that be so, the petitioner ought to have been afforded an opportunity to explain before passing any adverse order.

Accordingly, both the Writ Petitions are allowed and the impugned orders dated 19-08-2004 and 20-08-2004 are set aside. However, this shall not preclude the respondents to initiate appropriate proceedings afresh following due process of law. No costs.

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23rd September, 2004.

Note:-
1.CC in two days.
(B/O)
gbs
2.Office is directed to place a copy

of this order in W.P.No.15110/2004
after signatures.

(B/O)

gbs

To

1 The Chairman, District Level Committee (Sand Auctions), Kadapa, Kadapa District. Mines and Minerals
2 The District Collector, Kadapa, Kadapa District.
3 The District Panchayat Officer, Kadapa, Kadapa District.
4. 2CCs to G.P. for Panchayat Raj & Rural Development, High Court of A.P. Buildings, Hyderabad (OUT).
5.2CD copies